

Senate Study Bill 3031

SENATE/HOUSE FILE _____
BY (PROPOSED SECRETARY OF
STATE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of business organizations
2 including administrative dissolution, registration of agents,
3 authorization of names, the filing, delivery, and service of
4 documents by the secretary of state, and the elimination of
5 certain filing fees.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7 TLSB 5346DP 81
8 kk/je/5

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1 1 Section 1. NEW SECTION. 486A.808 GROUNDS FOR
1 2 ADMINISTRATIVE DISSOLUTION.
1 3 The secretary of state may commence a proceeding under
1 4 section 486A.809 to administratively dissolve a partnership if
1 5 any of the following apply:
1 6 1. The partnership is without a registered agent or
1 7 registered office in this state for sixty days or more.
1 8 2. The partnership does not notify the secretary of state
1 9 within sixty days that its registered agent or registered
1 10 office has been changed, that its registered agent has
1 11 resigned, or that its registered office has been discontinued.
1 12 Sec. 2. NEW SECTION. 486A.809 PROCEDURE FOR AND EFFECT
1 13 OF ADMINISTRATIVE DISSOLUTION.
1 14 1. If the secretary of state determines that one or more
1 15 grounds exist under section 486A.808 for dissolving a
1 16 partnership, the secretary of state shall serve the
1 17 partnership with written notice of the secretary of state's
1 18 determination pursuant to section 486A.1214.
1 19 2. If the partnership does not correct each ground for
1 20 dissolution or demonstrate to the reasonable satisfaction of
1 21 the secretary of state that each ground determined by the
1 22 secretary of state does not exist within sixty days after
1 23 service of the notice is perfected under section 486A.1214,
1 24 the secretary of state shall administratively dissolve the
1 25 partnership by signing a certificate of dissolution that
1 26 recites the ground or grounds for dissolution and its
1 27 effective date. The secretary of state shall file the
1 28 document and serve a copy on the partnership pursuant to
1 29 section 486A.1214.
1 30 3. A partnership administratively dissolved continues its
1 31 partnership existence but shall not carry on any business
1 32 except that necessary to wind up and liquidate its business
1 33 and affairs and notify claimants.
1 34 4. The administrative dissolution of a partnership does
1 35 not terminate the authority of its registered agent.
2 1 5. The secretary of state's administrative dissolution of
2 2 a partnership pursuant to this section appoints the secretary
2 3 of state the partnership's agent for service of process in any
2 4 proceeding based on a cause of action which arose during the
2 5 time the partnership was authorized to transact business in
2 6 this state. Service of process on the secretary of state
2 7 under this subsection is service on the partnership. Upon
2 8 receipt of process, the secretary of state shall serve a copy
2 9 of the process on the partnership as provided in section
2 10 486A.1214. This subsection does not preclude service on the
2 11 partnership's registered agent, if any.
2 12 Sec. 3. NEW SECTION. 486A.810 REINSTATEMENT FOLLOWING
2 13 ADMINISTRATIVE DISSOLUTION.
2 14 1. A partnership administratively dissolved under section

2 15 486A.809 may apply to the secretary of state for reinstatement
2 16 at any time after the effective date of dissolution. The
2 17 application shall be delivered to the secretary of state for
2 18 filing and state all of the following:

2 19 a. The name of the partnership at its date of dissolution
2 20 and the effective date of its administrative dissolution.

2 21 b. That the ground or grounds for dissolution have been
2 22 eliminated or never existed.

2 23 c. If the partnership is a limited liability partnership
2 24 and the partnership name cited in paragraph "a" is
2 25 unavailable, that the name of the partnership satisfies
2 26 section 486A.1002.

2 27 d. The federal tax identification number of the
2 28 partnership.

2 29 2. a. The secretary of state shall refer the federal tax
2 30 identification number contained in the application for
2 31 reinstatement to the department of revenue. The department of
2 32 revenue shall report to the secretary of state the tax status
2 33 of the partnership. If the department reports to the
2 34 secretary of state that a filing delinquency or liability
2 35 exists against the partnership, the secretary of state shall
3 1 not cancel the certificate of dissolution until the filing
3 2 delinquency or liability is satisfied.

3 3 b. If the secretary of state determines that the
3 4 application contains the information required by subsection 1,
3 5 that a delinquency or liability reported pursuant to paragraph
3 6 "a" has been satisfied, and that the information is correct,
3 7 the secretary of state shall cancel the certificate of
3 8 dissolution and prepare a certificate of reinstatement that
3 9 recites the secretary of state's determination and the
3 10 effective date of reinstatement, file the original
3 11 certificate, and serve a copy on the partnership pursuant to
3 12 section 486A.1214. If the partnership name in subsection 1,
3 13 paragraph "c", is different than the partnership name in
3 14 subsection 1, paragraph "a", the certificate of reinstatement
3 15 shall constitute an amendment to the statement of
3 16 qualification insofar as it pertains to the partnership name.

3 17 3. When the reinstatement is effective, it relates back to
3 18 and takes effect as of the effective date of the
3 19 administrative dissolution as if the administrative
3 20 dissolution had never occurred.

3 21 4. A partnership dissolved under section 486A.809 shall
3 22 not lose the right to retain its partnership name if the
3 23 reinstatement is effective within five years of the effective
3 24 date of the partnership dissolution.

3 25 Sec. 4. NEW SECTION. 486A.811 APPEAL FROM DENIAL OF
3 26 REINSTATEMENT.

3 27 1. If the secretary of state denies a partnership's
3 28 application for reinstatement following administrative
3 29 dissolution, the secretary of state shall serve the
3 30 partnership pursuant to section 486A.1214 with a written
3 31 notice that explains the reason or reasons for the denial.

3 32 2. The partnership may appeal the denial of reinstatement
3 33 to the district court within thirty days after service of the
3 34 notice of denial is perfected. The partnership may appeal by
3 35 petitioning the court to set aside the dissolution and
4 1 attaching to the petition a copy of the secretary of state's
4 2 certificate of dissolution, the partnership's application for
4 3 reinstatement, and the secretary of state's notice of denial.

4 4 3. The court may summarily order the secretary of state to
4 5 reinstate the dissolved partnership or may take other action
4 6 the court considers appropriate.

4 7 Sec. 5. Section 488.108, subsection 4, paragraph b, Code
4 8 Supplement 2005, is amended to read as follows:

4 9 b. Each name reserved, registered, or protected under
4 10 section 486A.1001, 488.109, or under sections 488.810,
4 11 486A.1001, 490.401, 490.402, 490.403, 490.1422, 490A.401,
4 12 490A.402, 490A.1311, 504.401, 504.402, and 504.403, 504.1423,
4 13 or 547.1.

4 14 Sec. 6. Section 488.810, Code 2005, is amended to read as
4 15 follows:

4 16 488.810 REINSTATEMENT FOLLOWING ADMINISTRATIVE
4 17 DISSOLUTION.

4 18 1. A limited partnership that has been administratively
4 19 dissolved may apply to the secretary of state for
4 20 reinstatement within two years at any time after the effective
4 21 date of dissolution. The application must be delivered to the
4 22 secretary of state for filing and state all of the following:

4 23 a. The name of the limited partnership and the effective
4 24 date of its administrative dissolution.

4 25 b. That the grounds for dissolution either did not exist

4 26 or have been eliminated.

4 27 c. ~~That if the application is received more than five~~
4 28 ~~years after the effective date of dissolution, that the~~
4 29 limited partnership's name satisfies the requirements of
4 30 section 488.108.

4 31 2. If the secretary of state determines that an
4 32 application contains the information required by subsection 2
4 33 1 and that the information is correct, the secretary of state
4 34 shall prepare a declaration of reinstatement that states this
4 35 determination, sign, and file the ~~original of the~~ declaration
5 1 of reinstatement, and ~~serve deliver a copy to~~ the limited
5 2 partnership ~~with a copy~~.

5 3 3. When reinstatement becomes effective, it relates back
5 4 to and takes effect as of the effective date of the
5 5 administrative dissolution and the limited partnership may
5 6 resume its activities as if the administrative dissolution had
5 7 never occurred.

5 8 4. ~~A limited partnership shall not lose the right to~~
5 9 ~~retain its limited partnership name if the reinstatement is~~
5 10 ~~effective within five years of the effective date of the~~
5 11 ~~limited partnership's dissolution.~~

5 12 Sec. 7. Section 490.502, subsection 3, Code 2005, is
5 13 amended to read as follows:

5 14 3. If a registered agent changes the registered agent's
5 15 business address to another place, the registered agent may
5 16 change the business address and the address of the registered
5 17 agent by filing a statement as required in subsection 2 for
5 18 each corporation, or a single statement for all corporations
5 19 named in the notice, except that it need be signed only by the
5 20 registered agent ~~or agents~~ and need not be responsive to
5 21 subsection 1, paragraph "c", and must recite that a copy of
5 22 the statement has been mailed to each corporation named in the
5 23 notice.

5 24 Sec. 8. Section 490.1422, Code 2005, is amended to read as
5 25 follows:

5 26 490.1422 REINSTATEMENT FOLLOWING ADMINISTRATIVE
5 27 DISSOLUTION.

5 28 1. A corporation administratively dissolved under section
5 29 490.1421 may apply to the secretary of state for reinstatement
5 30 ~~within two years at any time~~ after the effective date of
5 31 dissolution. The application must meet all of the following
5 32 requirements:

5 33 a. Recite the name of the corporation at its date of
5 34 dissolution and the effective date of its administrative
5 35 dissolution.

6 1 b. State that the ground or grounds for dissolution have
6 2 been eliminated.

6 3 c. State a corporate name that satisfies the requirements
6 4 of section 490.401.

6 5 d. State the federal tax identification number of the
6 6 corporation.

6 7 2. a. The secretary of state shall refer the federal tax
6 8 identification number contained in the application for
6 9 reinstatement to the department of revenue. The department of
6 10 revenue shall report to the secretary of state the tax status
6 11 of the corporation. If the department reports to the
6 12 secretary of state that a filing delinquency or liability
6 13 exists against the corporation, the secretary of state shall
6 14 not cancel the certificate of dissolution until the filing
6 15 delinquency or liability is satisfied.

6 16 b. If the secretary of state determines that the
6 17 application contains the information required by subsection 1,
6 18 and that a delinquency or liability reported pursuant to
6 19 paragraph "a" ~~of this subsection~~ has been satisfied, and that
6 20 the information is correct, the secretary of state shall
6 21 cancel the certificate of dissolution and prepare a
6 22 certificate of reinstatement that recites the secretary of
6 23 state's determination and the effective date of reinstatement,
6 24 file the ~~original of the~~ certificate of reinstatement, and
6 25 serve a copy on the corporation under section 490.504. If the
6 26 corporate name in subsection 1, paragraph "c", is different
6 27 than the corporate name in subsection 1, paragraph "a", the
6 28 certificate of reinstatement shall constitute an amendment to
6 29 the articles of incorporation insofar as it pertains to the
6 30 corporate name.

6 31 3. When the reinstatement is effective, it relates back to
6 32 and takes effect as of the effective date of the
6 33 administrative dissolution as if the administrative
6 34 dissolution had never occurred.

6 35 4. ~~Notwithstanding the reinstatement period established in~~
7 1 ~~subsection 1, a corporation administratively dissolved after~~

~~7 2 December 31, 1984, which files an application for
7 3 reinstatement prior to January 1, 1996, containing the
7 4 information required under subsection 1, shall be treated as
7 5 if its application had been timely filed under subsection 1.
7 6 In this case, the secretary of state shall process the
7 7 application pursuant to subsection 2 and, if a certificate of
7 8 reinstatement is issued, the provisions of subsection 3 shall
7 9 apply. A corporation shall not lose the right to retain its
7 10 corporate name if the reinstatement is effective within five
7 11 years of the effective date of the corporation's dissolution.~~

7 12 Sec. 9. Section 490.1701, subsection 3, paragraph a, Code
7 13 Supplement 2005, is amended to read as follows:

7 14 a. The corporation shall amend or restate its articles of
7 15 incorporation to indicate that the corporation adopts this
7 16 chapter and to designate the address of its initial registered
7 17 office and the name of its registered agent ~~or agents~~ at that
7 18 office and, if the name of the corporation is not in
7 19 compliance with the requirements of this chapter, to change
7 20 the name of the corporation to one complying with the
7 21 requirements of this chapter.

7 22 Sec. 10. Section 490A.121, subsections 2 and 3, Code 2005,
7 23 are amended to read as follows:

~~7 24 2. The secretary of state files a document by stamping or
7 25 otherwise endorsing recording it as "filed", together with the
7 26 secretary of state's name and official title and on the date
7 27 and at the time of receipt, on both the document and the
7 28 receipt for the filing fee, and recording the document in the
7 29 records of the secretary of state. After filing a document,
7 30 and except as provided in section 490A.503, the secretary of
7 31 state shall deliver the document, with the filing fee receipt,
7 32 or acknowledgment of receipt if no fee is required, attached,
7 33 to the domestic or foreign limited liability company or its
7 34 representative a copy of the document with an acknowledgement
7 35 of the date and time of filing.~~

~~8 1 3. If the secretary of state refuses to file a document,
8 2 the secretary of state shall return it to the domestic or
8 3 foreign limited liability company or its representative within
8 4 ten days after the document was received by the secretary of
8 5 state, together with a brief, written explanation of the
8 6 reason for the refusal.~~

8 7 Sec. 11. Section 490A.124, subsection 1, paragraphs e and
8 8 f, Code 2005, are amended by striking the paragraphs.

8 9 Sec. 12. Section 490A.131, subsection 1, paragraph b, Code
8 10 Supplement 2005, is amended to read as follows:

8 11 b. The street ~~and mailing~~ address of its ~~designated~~
8 12 ~~registered~~ office and the name and street ~~and mailing~~ address
8 13 of its ~~registered~~ agent for service of process in this state.

8 14 Sec. 13. Section 490A.131, subsection 5, Code Supplement
8 15 2005, is amended by striking the subsection.

8 16 Sec. 14. Section 490A.401, subsection 3, Code 2005, is
8 17 amended to read as follows:

8 18 3. Except as authorized by subsections 4 and 5, a limited
8 19 liability company name must be distinguishable upon the
8 20 records of the secretary of state from all of the following:

8 21 a. The name of a limited liability company, limited
8 22 partnership, or corporation organized under the law of this
8 23 state or registered as a foreign limited liability company,
8 24 foreign limited partnership, or foreign corporation in this
8 25 state, or the name of any such entity that has been
8 26 administratively dissolved for a period of less than five
8 27 years from the date of the dissolution of the entity.

8 28 b. A name reserved in the manner provided under the law of
8 29 this state.

8 30 c. The fictitious name adopted by a foreign corporation,
8 31 foreign limited partnership, or foreign limited liability
8 32 company authorized to transact business in this state, because
8 33 its real name is unavailable.

~~8 34 d. The corporate name of a nonprofit corporation
8 35 incorporated or authorized to transact business in this state,
9 1 or the corporate name of a nonprofit corporation that has been
9 2 administratively dissolved for a period of less than five
9 3 years from the date of the dissolution of the corporation.~~

9 4 Sec. 15. Section 490A.401, subsection 6, Code 2005, is
9 5 amended to read as follows:

~~9 6 6. This chapter does not control the use of fictitious
9 7 names; however, if a limited liability company or a foreign
9 8 limited liability company uses a fictitious name in this state
9 9 it shall deliver to the secretary of state for filing a
9 10 certified copy of the resolution of the limited liability
9 11 company filed and executed according to 490A.120 adopting the
9 12 fictitious name.~~

9 13 Sec. 16. Section 490A.1301, Code 2005, is amended by
9 14 adding the following new subsection:

9 15 NEW SUBSECTION. 4. The limited liability company is
9 16 administratively dissolved by the secretary of state under
9 17 section 490A.1310.

9 18 Sec. 17. NEW SECTION. 490A.1308 REVOCATION OF
9 19 DISSOLUTION.

9 20 1. A limited liability company may revoke its dissolution
9 21 within one hundred twenty days of the effective date of its
9 22 articles of dissolution.

9 23 2. Revocation of dissolution must be authorized in the
9 24 same manner as the dissolution was authorized unless that
9 25 authorization permitted revocation by action of the managers
9 26 alone, in which event the managers may revoke the dissolution
9 27 without member action.

9 28 3. After the revocation of dissolution is authorized, the
9 29 limited liability company may revoke the dissolution by
9 30 delivering to the secretary of state for filing articles of
9 31 revocation of dissolution, together with a copy of its
9 32 articles of dissolution, that set forth all of the following:

9 33 a. The name of the limited liability company.
9 34 b. The effective date of the dissolution that was revoked.
9 35 c. The date that the revocation of dissolution was

10 1 authorized.
10 2 d. If members of the company unanimously revoked the
10 3 dissolution, a statement to that effect.

10 4 e. If the company's managers revoked a dissolution
10 5 authorized by the members, a statement that revocation was
10 6 permitted by action by the managers alone pursuant to that
10 7 authorization.

10 8 4. Revocation of dissolution is effective upon the
10 9 effective date of the articles of revocation of dissolution.

10 10 5. When the revocation of dissolution is effective, the
10 11 revocation relates back to and takes effect as of the
10 12 effective date of the dissolution as if the dissolution never
10 13 occurred.

10 14 Sec. 18. NEW SECTION. 490A.1309 GROUNDS FOR
10 15 ADMINISTRATIVE DISSOLUTION.

10 16 The secretary of state may commence a proceeding under
10 17 section 490A.1310 to administratively dissolve a limited
10 18 liability company if any of the following apply:

10 19 1. The limited liability company has not delivered a
10 20 biennial report to the secretary of state in a form that meets
10 21 the requirements of section 490A.131, within sixty days after
10 22 the report is due, or has not paid the filing fee as
10 23 determined by the secretary of state, within sixty days after
10 24 the fee is due.

10 25 2. The limited liability company is without a registered
10 26 agent or registered office in this state for sixty days or
10 27 more.

10 28 3. The limited liability company does not notify the
10 29 secretary of state within sixty days that its registered agent
10 30 or registered office has been changed, that its registered
10 31 agent has resigned, or that its registered office has been
10 32 discontinued.

10 33 4. The limited liability company's period of duration
10 34 stated in its articles of organization expires.

10 35 Sec. 19. NEW SECTION. 490A.1310 GROUNDS FOR AND EFFECT
11 1 OF ADMINISTRATIVE DISSOLUTION.

11 2 1. If the secretary of state determines that one or more
11 3 grounds exist under section 490A.1309 for dissolving a limited
11 4 liability company, the secretary of state shall serve the
11 5 limited liability company with written notice of the secretary
11 6 of state's determination pursuant to section 490A.504.

11 7 2. If the limited liability company does not correct each
11 8 ground for dissolution or demonstrate to the reasonable
11 9 satisfaction of the secretary of state that each ground
11 10 determined by the secretary of state does not exist within
11 11 sixty days after service of the notice is perfected under
11 12 section 490A.504, the secretary of state shall
11 13 administratively dissolve the limited liability company by
11 14 signing a certificate of dissolution that recites the ground
11 15 or grounds for dissolution and its effective date. The
11 16 secretary of state shall file the certificate and serve a copy
11 17 on the limited liability company under section 490A.504.

11 18 3. A limited liability company administratively dissolved
11 19 continues its existence but shall not carry on any business
11 20 except that necessary to wind up and liquidate its business
11 21 and affairs and notify claimants.

11 22 4. The administrative dissolution of a limited liability
11 23 company does not terminate the authority of its registered

11 24 agent.

11 25 5. The secretary of state's administrative dissolution of
11 26 a limited liability company pursuant to this section appoints
11 27 the secretary of state as the limited liability company's
11 28 agent for service of process in any proceeding based on a
11 29 cause of action which arose during the time the limited
11 30 liability company was authorized to transact business in this
11 31 state. Service of process on the secretary of state under
11 32 this subsection is service on the limited liability company.
11 33 Upon receipt of process, the secretary of state shall serve a
11 34 copy of the process on the limited liability company as
11 35 provided in section 490A.504. This subsection does not
12 1 preclude service on the limited liability company's registered
12 2 agent, if any.

12 3 Sec. 20. NEW SECTION. 490A.1311 REINSTATEMENT FOLLOWING
12 4 ADMINISTRATIVE DISSOLUTION.

12 5 1. A limited liability company administratively dissolved
12 6 under section 490A.1310 may apply to the secretary of state
12 7 for reinstatement at any time after the effective date of
12 8 dissolution. The application must be delivered to the
12 9 secretary of state for filing and state all of the following:
12 10 a. The name of the limited liability company at its date
12 11 of dissolution and the effective date of its administrative
12 12 dissolution.

12 13 b. That the ground or grounds for dissolution have been
12 14 eliminated.

12 15 c. If the application is received more than five years
12 16 after the effective date of dissolution, that the name of the
12 17 limited liability company satisfies the requirements of
12 18 section 490A.401.

12 19 d. The federal tax identification number of the limited
12 20 liability company.

12 21 2. a. The secretary of state shall refer the federal tax
12 22 identification number contained in the application for
12 23 reinstatement to the department of revenue. The department of
12 24 revenue shall report to the secretary of state the tax status
12 25 of the limited liability company. If the department reports
12 26 to the secretary of state that a filing delinquency or
12 27 liability exists against the limited liability company, the
12 28 secretary of state shall not cancel the certificate of
12 29 dissolution until the filing delinquency or liability is
12 30 satisfied.

12 31 b. If the secretary of state determines that the
12 32 application contains the information required by subsection 1,
12 33 that a delinquency or liability reported pursuant to paragraph
12 34 "a" has been satisfied, and that the information is correct,
12 35 the secretary of state shall cancel the certificate of
13 1 dissolution and prepare a certificate of reinstatement that
13 2 recites the secretary of state's determination and the
13 3 effective date of reinstatement, file the document, and
13 4 deliver a copy to the limited liability company under section
13 5 490A.504. If the name in subsection 1, paragraph "c", is
13 6 different than the name in subsection 1, paragraph "a", the
13 7 certificate of reinstatement shall constitute an amendment to
13 8 the articles of organization insofar as it pertains to the
13 9 name.

13 10 3. When the reinstatement is effective, it relates back to
13 11 and takes effect as of the effective date of the
13 12 administrative dissolution as if the administrative
13 13 dissolution had never occurred.

13 14 4. A limited liability company shall not lose the right to
13 15 retain its name if the reinstatement is effective within five
13 16 years of the effective date of the limited liability company's
13 17 dissolution.

13 18 Sec. 21. NEW SECTION. 490A.1312 APPEAL FROM DENIAL OF
13 19 REINSTATEMENT.

13 20 1. If the secretary of state denies a limited liability
13 21 company's application for reinstatement following
13 22 administrative dissolution, the secretary of state shall serve
13 23 the limited liability company under section 490A.504 with a
13 24 written notice that explains the reason or reasons for the
13 25 denial.

13 26 2. The limited liability company may appeal the denial of
13 27 reinstatement to the district court within thirty days after
13 28 service of the notice of denial is perfected. The limited
13 29 liability company may appeal by petitioning the court to set
13 30 aside the dissolution and attaching to the petition a copy of
13 31 the secretary of state's certificate of dissolution, the
13 32 limited liability company's application for reinstatement, and
13 33 the secretary of state's notice of denial.

13 34 3. The court may summarily order the secretary of state to

13 35 reinstate the dissolved limited liability company or may take
14 1 other action the court considers appropriate.

14 2 Sec. 22. Section 490A.1402, Code 2005, is amended by
14 3 striking the section and inserting in lieu thereof the
14 4 following:

14 5 490A.1402 REGISTRATION.

14 6 1. A foreign limited liability company may apply for a
14 7 certificate of authority to transact business in this state by
14 8 delivering an application to the secretary of state for
14 9 filing. The application shall set forth all of the following:

14 10 a. The name of the foreign limited liability company, or
14 11 if its name is unavailable for use in this state, a name that
14 12 satisfies the requirements of section 490A.1404.

14 13 b. The name of the state or country under whose law the
14 14 foreign limited liability company is organized.

14 15 c. The date of formation and period of duration.

14 16 d. The street address of the foreign limited liability
14 17 company's principal office.

14 18 e. The address of the foreign limited liability company's
14 19 registered office in this state and the name of its registered
14 20 agent at that address.

14 21 2. The foreign limited liability company shall deliver the
14 22 completed application to the secretary of state and also
14 23 deliver to the secretary of state a certificate of existence
14 24 or a document of similar import duly authenticated by the
14 25 secretary of state or proper officer of the state or other
14 26 jurisdiction of its formation which is dated no earlier than
14 27 ninety days prior to the date the application is filed with
14 28 the secretary of state.

14 29 Sec. 23. Section 490A.1410, subsection 1, paragraph a,
14 30 Code 2005, is amended by adding the following new
14 31 subparagraph:

14 32 NEW SUBPARAGRAPH. (5) Deliver for filing to the secretary
14 33 of state a biennial report as required by section 490A.131.

14 34 Sec. 24. Section 499.78, subsection 1, Code 2005, is
14 35 amended to read as follows:

15 1 1. An association administratively dissolved under section
15 2 499.77 may apply to the secretary of state for reinstatement
15 3 ~~within two years at any time~~ after the effective date of
15 4 dissolution. The application must meet all of the following
15 5 requirements:

15 6 Sec. 25. Section 501.104, Code 2005, is amended to read as
15 7 follows:

15 8 501.104 NAME.

15 9 The name of a cooperative organized under this chapter ~~must~~
~~15 10 contain shall meet all of the following requirements:~~

15 11 ~~1. Contain~~ the word "cooperative", "coop", or "co-op", ~~and~~
~~15 12 the name must be.~~

15 13 ~~2. Be distinguishable from the all of the following:~~

15 14 ~~a. The names of cooperatives organized under this chapter~~
15 15 ~~or another chapter, or.~~

15 16 ~~b. The names of cooperatives which have been~~
~~15 17 administratively dissolved for a period of less than five~~
~~15 18 years from the date of the dissolution of each cooperative.~~

15 19 ~~c. The names of foreign cooperatives authorized to do~~
15 20 ~~business in this state.~~

15 21 Sec. 26. Section 501.813, Code 2005, is amended to read as
15 22 follows:

15 23 501.813 REINSTATEMENT FOLLOWING ADMINISTRATIVE
15 24 DISSOLUTION.

15 25 1. A cooperative administratively dissolved under section
15 26 501.812 may apply to the secretary of state for reinstatement
15 27 ~~within two years at any time~~ after the effective date of
15 28 dissolution. The application must meet all of the following
15 29 requirements:

15 30 a. Recite the name of the cooperative at its date of
15 31 dissolution and the effective date of its administrative
15 32 dissolution.

15 33 b. State that the ground or grounds for dissolution have
15 34 been eliminated.

15 35 ~~c. State~~ If the application is received more than five
~~16 1 years after the effective date of dissolution, state~~ a name
16 2 that satisfies the requirements of section 501.104.

16 3 d. State the federal tax identification number of the
16 4 cooperative.

16 5 2. a. The secretary of state shall refer the federal tax
16 6 identification number contained in the application for
16 7 reinstatement to the department of revenue. The department of
16 8 revenue shall report to the secretary of state the tax status
16 9 of the cooperative. If the department reports to the
16 10 secretary of state that a filing delinquency or liability

16 11 exists against the cooperative, the secretary of state shall
16 12 not cancel the certificate of dissolution until the filing
16 13 delinquency or liability is satisfied.

16 14 b. If the secretary of state determines that the
16 15 application contains the information required by subsection 1,
16 16 and that a delinquency or liability reported pursuant to
16 17 paragraph "a" has been satisfied, and that the information is
16 18 correct, the secretary of state shall cancel the certificate
16 19 of dissolution and prepare a certificate of reinstatement that
16 20 recites the secretary of state's determination and the
16 21 effective date of reinstatement, file the ~~original of the~~
16 22 certificate of reinstatement, and serve a copy on the
16 23 cooperative under section 501.106. If the name of the
16 24 cooperative as provided in subsection 1, paragraph "c", is
16 25 different than the name in subsection 1, paragraph "a", the
16 26 certificate of reinstatement shall constitute an amendment to
16 27 the articles of association insofar as it pertains to the
16 28 name.

16 29 3. When the reinstatement is effective, it relates back to
16 30 and takes effect as of the effective date of the
16 31 administrative dissolution as if the administrative
16 32 dissolution had never occurred.

16 33 4. A cooperative shall not lose the right to retain its
16 34 name if the reinstatement is effective within five years of
16 35 the effective date of the cooperative's dissolution.

17 1 Sec. 27. Section 504.401, subsections 2 and 5, Code
17 2 Supplement 2005, are amended to read as follows:

17 3 2. Except as authorized by subsections 3 and 4, a
17 4 corporate name must be distinguishable upon the records of the
17 5 secretary of state from:

17 6 a. The corporate name of any other nonprofit or business
17 7 corporation incorporated or authorized to do business in this
17 8 state.

17 9 b. A corporate name reserved, or registered, or protected
17 10 under section 486A.1001, 488.108, 488.109, 488.810, 490.401,
17 11 490.402, 490.403, 490.1422, 490A.401, 490A.402, 490A.1311,
17 12 504.402, or 504.403, 504.1423, or 547.1.

17 13 c. The fictitious name of a foreign business or nonprofit
17 14 corporation authorized to transact business in this state
17 15 because its real name is unavailable.

17 16 5. This chapter does not control the use of fictitious
17 17 names; however, if a corporation or a foreign corporation uses
17 18 a fictitious name in this state, it shall deliver to the
17 19 secretary of state for filing a certified copy of the
17 20 resolution of its board of directors, ~~certified by its~~
17 21 ~~secretary, filed and executed according to section 504.111~~
17 22 adopting the fictitious name.

17 23 Sec. 28. Section 504.1423, Code 2005, is amended to read
17 24 as follows:

17 25 504.1423 REINSTATEMENT FOLLOWING ADMINISTRATIVE
17 26 DISSOLUTION.

17 27 1. A corporation administratively dissolved under section
17 28 504.1422 may apply to the secretary of state for reinstatement
17 29 within two years at any time after the effective date of
17 30 dissolution. The application must state all of the following:

17 31 a. The name of the corporation and the effective date of
17 32 its administrative dissolution.

17 33 b. That the ground or grounds for dissolution either did
17 34 not exist or have been eliminated.

17 35 c. That if the application is received more than five
18 1 years after the effective date of dissolution, that the
18 2 corporation's name satisfies the requirements of section
18 3 504.401.

18 4 d. The federal tax identification number of the
18 5 corporation.

18 6 2. a. The secretary of state shall refer the federal tax
18 7 identification number contained in the application for
18 8 reinstatement to the department of revenue. The department of
18 9 revenue shall report to the secretary of state the tax status
18 10 of the corporation. If the department reports to the
18 11 secretary of state that a filing delinquency or liability
18 12 exists against the corporation, the secretary of state shall
18 13 not cancel the certificate of dissolution until the filing
18 14 delinquency or liability is satisfied.

18 15 b. If the secretary of state determines that the
18 16 application contains the information required by subsection 1,
18 17 that a delinquency or liability reported pursuant to paragraph
18 18 "a" has been satisfied, and that all of the application
18 19 information is correct, the secretary of state shall cancel
18 20 the certificate of dissolution and prepare a certificate of
18 21 reinstatement reciting that determination and the effective

18 22 date of reinstatement, file the ~~original of the~~ certificate of
18 23 reinstatement, and serve a copy on the corporation under
18 24 section 504.504. If the corporate name in subsection 1,
18 25 paragraph "c", is different from the corporate name in
18 26 subsection 1, paragraph "a", the certificate of reinstatement
18 27 shall constitute an amendment to the articles of incorporation
18 28 insofar as it pertains to the corporate name.
18 29 3. When reinstatement is effective, it relates back to and
18 30 takes effect as of the effective date of the administrative
18 31 dissolution and the corporation shall resume carrying on its
18 32 activities as if the administrative dissolution had never
18 33 occurred.
18 34 4. A corporation shall not lose the right to retain its
18 35 corporate name if the reinstatement is effective within five
19 1 years of the effective date of the corporation's dissolution.

19 2 EXPLANATION

19 3 This bill relates to the regulation of business
19 4 organizations by the secretary of state.
19 5 The bill provides for the administrative dissolution and
19 6 reinstatement of partnerships. The bill places additional
19 7 restrictions on the naming of a limited partnership and
19 8 provides for the retention of a name of a limited partnership
19 9 upon reinstatement after administrative dissolution.
19 10 The bill provides for a corporation to apply for
19 11 reinstatement after administrative dissolution at any time
19 12 after the effective date of the dissolution and allows the
19 13 corporation to retain its corporate name after reinstatement.
19 14 The bill modifies the method by which the secretary must
19 15 file documents for limited liability companies and removes the
19 16 time requirement in which the secretary of state must return a
19 17 document that has been refused filing. The bill eliminates
19 18 fees for the filing of an application for registered name per
19 19 month and an application for renewal of registered name for
19 20 limited liability companies. The bill strikes the provision
19 21 relating to the filing of the first biennial report of a
19 22 limited liability company. The bill places additional
19 23 restrictions on the name of a limited liability company and
19 24 the name of a foreign limited liability company. The bill
19 25 provides for the revocation of a dissolution of a limited
19 26 liability company. The bill provides for the administrative
19 27 dissolution of a limited liability company, the reinstatement
19 28 following an administrative dissolution, and the right to
19 29 appeal from a denial of reinstatement.
19 30 The bill modifies the registration requirements for a
19 31 foreign limited liability company. The bill provides that a
19 32 certificate of authority of a foreign limited liability
19 33 company may be revoked for failure to deliver required
19 34 biennial reports.
19 35 The bill allows a cooperative association and a closed
20 1 cooperative that has been administratively dissolved to apply
20 2 for reinstatement at any time after dissolution. The bill
20 3 restricts the naming of closed cooperatives.
20 4 The bill restricts the naming of nonprofit corporations and
20 5 allows nonprofit corporations that have been administratively
20 6 dissolved to apply for reinstatement at any time after
20 7 dissolution. The bill allows a nonprofit corporation to
20 8 retain its name after reinstatement.
20 9 LSB 5346DP 81
20 10 kk:rj/je/5